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APPENDIX XXI.

[Vide answers to question No. 990 asked by Mr. D. Narayana Raju at the meeting of the Legislative Council held on the 29th November 1928, page 478 supra.]

Reference from the Board of Revenue (L.R. and Sett.), No. H. 7221/27-3, dated 13th July 1928.

H. L. BRAIDWOOD, Esq., I.C.S.,
Commissioner of Land Revenue and Settlement.

[Assessment—Water-rate (Godavari West)—Bhimavaram taluk—Konitivada estate—Transfer from Schedule A to B—Proposals submitted.]

The Board submits for the orders of Government a copy of the appeal petition of the proprietor of Konitivada estate applying for the transfer of his estate from schedule A to B of the schedules prepared under section 1-A of the Irrigation Cess Act and appended to the notification issued in G.O. No. 1159, Revenue, dated 22nd April 1914. At present the water-cess payable on lands irrigated for the first crop is leviable from the proprietor and the proprietor's request is that it should be levied from the ryots. He says that the Konitivada estate was placed in Schedule A in 1914 because the mamul wet area had not then been localized and that the intention was to do so as soon as the area was localized and that now that the mamul wet area has been localized and a record of rights which has become final prepared determining old wet lands there is no objection to granting his request.

When the proprietor preferred a similar request in 1927 the ryots objected to the transfer on the ground that it would interfere with the contractual relations between them and the proprietor as their pattas contained a condition that in case the ryots cultivated a second crop they should pay water-cess to Government but not otherwise, that the selection of mamul wet fields made by the proprietor was not in conformity with the old accounts and that the rents of some lands that were omitted were the same as the rents of lands selected as mamul wet. The Collector did not attach any importance to these contentions. He observed that it was not to be expected that the mamul wet localization would suit every one or that the rents on the mamul wet lands would show any marked difference from those on the non-mamul wet lands and added that the consideration on which rents were fixed originally could not be traced now. He stated that the outstanding facts were that the ryots did formerly pay water-rate on the non-mamul wet area and that the proprietor had great trouble over collecting the water-rate now which has led up to much litigation and recommended that as the evidence showed that there was no contract between the proprietor and the ryots to the effect that he was responsible for the payment of water-rate, the estate should be transferred to Schedule B. He also observed that the reason why the estate was included in Schedule A in 1914 was that the mamul wet lands had not been localized then and that it was intended to put the estate in Schedule B when localization had been completed.

The Board however considered that if the Collector's proposal was accepted Government would be liable to be sued by every ryot from whom they attempted to collect water-rate and that the burden of proof would rest

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on Government to show that any land on which water-rate was levied was not wet at the time of the Permanent Settlement. It therefore informed the Collector that it could not support the proposal unless there was clear evidence that the lands excluded from the mamul wet zone were not old wet. The proprietor now represents that this evidence is forthcoming in the record of rights prepared for the village and that this record of rights has become final and cannot be questioned hereafter—vide certified copy of the Sub-Court's judgment enclosed. According to the record of rights register the total extent of mamul wet lands in the village is 909·34 acres as against a mamul wet area of 931·88 recognized for the village. The remaining extent of wet lands, viz., 132·68 acres, is described as 'tirva wet' in the register, i.e., lands which are liable to pay water-cess when water is used for irrigation. This meets the difficulty anticipated by the Board before for no lands not classified as such can hereafter claim to be mamul wet and no complications will result from the transfer of the estate from schedule A to schedule B. The Board accordingly supports the proposal and submits it for the orders of Government. A preliminary notification inviting objections has to be published and it may be provided therein that objections, if any, raised by ryots should relate to individual fields.

B. G. HOLDSWORTH,
Secretary.

ENCLOSURES.

(1)

To the Hon'ble the Members of the Board of Revenue (Land Revenue) Madras.

The humble memorandum of appeal of Sri Taduri Sri Rama Narasimha Rao, proprietor, Konitivada estate, Bhimavaram taluk, West Godavari, residing at Rajahmundry, against the order of the District Collector, West Godavari, dated 7th September 1927, R.O.C. No. A-2-9722/25, and received by the appellant on 11th September 1927 passed on the appellant's petitions, dated 25th May 1927, and 12th August 1927, with enclosures attached to both, requesting the transfer of the estate from schedule A to B, most respectfully showeth :—

The petitioner first applied to the Collector on 13th July 1926 to kindly recommend to the Board of Revenue and get his estate now included in schedule A of the Irrigation Cess Act, transferred to schedule B. The Collector, apparently on a Board's Proceedings Mis. No. 718, sent a memorandum, dated 25th April 1927, to the petitioner informing the petitioner that the lands cannot be transferred from A to B unless he can prove conclusively the lands that have not been selected as mamul wet are not old wet.

The petitioner submitted petitions in reply on 25th May 1927 and on 12th August 1927 to the Collector. On this the Collector passed the order now appealed against. It is submitted that the Collector should have forwarded the petitions of the petitioner to the Board and recommended the transfer, as the Collector is cognizant of the estate having been duly surveyed and settled and the record of rights for the estate having been prepared and published and had sufficient material to show that there was no old wet other than the mamul wet already classified and localized as such.

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The petitioner submits that till the year 1914, the Government was collecting the water-cess as regards the lands cultivated over and above the mamul wet area from the tenants directly and when the notification of rules for the levying of water-cess under the Irrigation Cess Act came into force in the year 1914 the village of Konitivada was classed under A schedule as there was then no localization of mamul wet. But when the village Konitivada was classed under schedule A the petitioner believes it was intended that when the localization was made it will be transferred to schedule B and the collection will be made direct from the ryots. The localization was made and approved in the year 1919 after due examination of a number of tenants, according to the proposals of the proprietor, as the Board by its Reference No. 132, dated 31st March 1894, directed that the localization was to be made according to the choice of the proprietor. But this was not given effect to immediately as the estate was being surveyed and an enquiry as regards the settlement of rents and the record of rights was going on. The register of record of rights was published in 1922 and localization was given effect to immediately after in fasli 1334 when it was possible to say which was mamul wet and which was not. After the localization was given effect to, the Collector on my application ordered the refund of the single and penal water-cess collected from me and collected the same from the tenants directly on the grounds that the irrigation of lands over and above the mamul wet area in Konitivada village carried on by the ryots is unauthorized and the water-cess single and penal for the irregular irrigation of land included in the ryots' holding should be collected from the ryots. There was an appeal by the tenants against the order of the Collector to the Board, but the Collector's order was confirmed in Board's Proceedings Routine No. 4561, dated 13th September 1926.

The petitioner then presented a petition to the Collector to change his estate Konitivada from A Schedule to B. The Collector on Board's Proceedings Mis. No. 718 sent an order, dated 25th April 1927, already referred to. The petitioner thereupon again submitted a memorandum explaining in detail how the localization was made and now it is binding on the tenants, the proprietor and the Government. The Collector, without again referring the matter to the Board, issued another order which is now appealed against. The Collector in his order now appealed against says that petitioner's request to change the classification cannot be complied with "unless he can show that the lands that have not been selected as mamul wet are not old wet."

The above two orders seem to proceed on the assumption that localization of mamul wet was not completed, whereas the localization had already been made and approved by the Collector, Kistna, in his Dis. No. 18515/19-18, dated 28th November 1919.

The lands that were localized as mamul wet were incorporated in the record of rights as finally published in the year 1922 after the resurvey of the estate, and it is now in force. There is thus no difficulty in finding out which is mamul wet and which is not. And when once the mamul wet area is localized as in the present case and incorporated in the record of rights, there is no necessity to prove which land is old wet and which is bapat wet or theeruvapallam. The tenants never objected to the localization which was adopted in the record of rights. The record of rights was prepared under

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section 166 (2) of the Estates Land Act after due notification and observance of other formalities and the tenants cannot now question the entries therein regarding classification, etc. The mamul wet lands have been so noted in the register of record of rights, and other lands usually cultivated with wet crops have been noted as 'theeruvapallam' or bapat wet lands. The tenants cannot claim under the law lands other than those noted as mamul wet in the record of rights to be mamul or old wet. Thus the record of rights is conclusive evidence of the fact that no lands not classed as mamul wet therein are old wet and the petitioner and the tenants are estopped from questioning it. The period of limitation for questioning the entries in the record of rights in a civil court has also expired. As a matter of fact, some of the tenants filed suits in the civil courts for certain corrections in the record of rights and they were held to be out of time and they were thrown out as barred by limitation.

While it is immaterial to the tenants whether they pay the water-cess which they are bound to pay, either to the proprietor or the Government, it is a great hardship to the proprietor to pay the amount to the Government first and then collect it from the tenants, particularly in view of the fact that the water is supplied to them on the application of the tenants directly made to the Government Public Works Department officers and the proprietor who is not even apprised of such applications gets no benefit whatever. There is thus a fresh contract between the Government and the tenants as regards the supply of water to bapat wet or dry lands on the individual application of the tenants and it is unfair to collect the water-cess for such irrigation from the proprietor who is not a party to the contract at all.

It is therefore prayed that, for the reasons stated above, the Government will be pleased to transfer the estate from A to B schedule and collect the water-cess if water is supplied for over and above the mamul wet zone from the tenants directly.

The petitioner prays that the Board will be pleased to send for the connected papers and the petitions filed before the Collector and read them as part of this memorandum. A list of records filed before the Collector along with the petitions is herewith annexed.

T. S. Narasimha Rao.

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(2)

IN THE COURT OF THE SUBORDINATE JUDGE OF ELLORE.

PRESENT:

M.R.Ry. S. VENKATASUBBA RAO PANTULU GARU, B.A., B.L.,
Subordinate Judge.

Thursday, the 6th day of January 1927.
Appeal No. 125 of 1926.

BETWEEN:

Rachuri Lakshminarayana Rao Pantulu Garu ... ... *Appellant (Plaintiff)*

and

(1) Sri Taduri Sree Rama Narasimha Rao Pantulu Garu, (2) Sri Taduri Sree Rama Raghavendra Rao Pantulu Garu and (3) Sri Taduri Sree Rama Bhanu Venkoji Rao Pantulu Garu ... ... *Respondents (Plaintiffs).*

On appeal from the decree of the Court of the District Munsif of Bhimavaram, dated the 30th day of January 1926, and made in O.S. No. 180 of 1924.

This appeal having been heard on the 5th day of January 1927 in the presence of Mr. Peddiraju, vakil for appellant, and of Mr. L. V. Bhadrayya, pleader for respondents, and having stood over to this day for consideration, the Court delivered the following

JUDGMENT.

This is connected with two other appeals A.S. Nos. 128 and 134 of 1926. The appellants in all the three appeals are ryots and their complaint is against the record of rights prepared by the settlement officer.

2. The only question in these three appeals is whether the suits were filed within time.

3. Under section 173, clause 2 of the Estates Land Act suits questioning the record of rights have to be filed within six months from the date of the final publication of the record of rights. Under sub-section (3) of section 170, if an appeal has been presented to revenue authorities under section 174 then within six months from the date of the disposal of such appeal the suit can be filed; it is admitted in these cases that the record of rights was finally published under section 170 on 30th April 1923. But these suits were filed in 1924 after six months from the date of the publication. Therefore, unless an appeal has been filed and was disposed of within six months from the date of the suits, they will be barred by time. Appellant Yerakaraju Venkataraju is plaintiff in O.S. No. 165 of 1924 out of which one of these three appeals arises. He alone contends that he filed an appeal to the revenue authorities. In the other two suits, it is admitted that the plaintiffs therein did not file any revenue appeals themselves. But they and

this Yerakaraju Venkataraju contend that the appeals filed to the revenue authorities were of a representative character. The appeal momorandums are not filed nor has it been proved otherwise that the appeals to the revenue authorities by other ryots were of representative character for the benefit of these appellants also. Those appeals, not being shown to be of a representative character, would not avail these appellants. Therefore, the two appeals arising from O.S. Nos. 166 and 180 of 1924 are barred and were rightly dismissed.

4. As regards Yerakaraju Venkataraju's suit O.S. No. 165 of 1924 his contention is that he filed an appeal to the revenue authorities. In support of it, he filed Exhibit II certified copy of a vakalat which contains among those who signed the vakalat a name Yerakaraju Venkataraju which is similar to the name of this plaintiff in O.S. No. 165 of 1924. But this Venkataraju examined as P.W. 3 had to admit that among the ryots of that village there are two or three people bearing the same name. Thus except his uncorroborated word, there is nothing to show that Yerakaraju Venkataraju who signed the vakalat Exhibit II was this plaintiff himself. The original of this vakalat has not been procured nor was the village munsif before whom the vakalat was executed examined to prove that this plaintiff was one of those executants. Thus beyond his own word, there is nothing to show that he filed any revenue appeal. On the other hand, the evidence of P.W. 1 Lakshminarasimham one of the three appellants in these connected suits filed an appeal to the revenue authorities. Thus it is clear that this plaintiff Venkataraju has failed to prove that he filed a revenue appeal and therefore he cannot avail himself of the latter portion of section 173, clause 2 of the Estates Land Act, as he did not file an appeal. Therefore in his case also his suit O.S. No. 165 of 1924 was filed after the period of limitation and, that was, therefore, rightly dismissed.

Thus these three appeals fail and are dismissed with costs. Pronounced in open Court, this 6th day of January 1927.

S. Venkatasubba Rao,
Subordinate Judge.